

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
(562) 590-5071

Filed: January 27, 2009
49th Day: March 17, 2009
180th Day: July 26, 2009
Staff: Liliana Roman-LB
Staff Report: February 18, 2009
Hearing Date: March 11-13, 2009
Commission Action:



W4d

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-08-354

APPLICANT: Warren Hayford

AGENT: John T. Morgan

PROJECT LOCATION: 7304 West Oceanfront, Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolition of an existing three-story duplex with attached 2-car garage and construction of a new 2,449 sq. ft., 29' high, two-story single family residence with a 118 sq. ft. second story deck, an 818 sq. ft. roof deck and an attached 427 sq. ft. two-car garage, 350 cubic yards of over-excavation and re-compaction for site preparation, hardscape improvements and minimal landscaping on a beachfront lot. The project also requests after-the-fact approval of a 15' deep by 30' wide concrete patio and 3' tall perimeter wall within the City's oceanfront encroachment area.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 2271-2008) dated December 12, 2008.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach-fronting single-family residence. The major issue of this staff report concerns beachfront development adjacent to ESHA and development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with ten (10) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) deviation from approved encroachment plans; 4) City's right to revoke encroachment permit; 5) conformance with the submitted drainage and run-off control plan; 6) landscaping; 7) storage of construction materials, mechanized equipment and removal of construction debris; 8) cooperation with the implementation of the Restoration Plan as required by previous consent order; 9) future development; and 10) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: CCC-06-CD-01; CCC-06-RO-01; V-5-05-013; City of Newport Beach certified Land Use Plan, *Coastal Hazard and Wave Runup Study for 7304 West Oceanfront, Newport Beach, CA* by GeoSoils, Inc. dated 11/20/08 and Preliminary *Geotechnical Investigation Single-Family Residence, 7304 W. Ocean Front, Newport Beach, CA* by P.A. & Associates, Inc. dated 11/26/08

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
 4. Staff Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders, dated January 26, 2006
-

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. **No Future Shoreline Protective Device**

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-08-354 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Deviation from Approved Encroachments**

- A. The only encroachment into the 15-foot deep encroachment area within the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a patio wall and planters (no more than 3 feet high) around the perimeter of an at-grade 15' deep by 30' wide concrete patio. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit evidence, for the review and approval of the Executive Director, that the encroachment fee required by the City to construct the proposed encroachments has been paid and that the property is enrolled in the City's annual encroachment permit/fee system. The property shall remain enrolled in the City's annual encroachment permit/fee system until the development is removed.

4. City's Right to Revoke Encroachment Permit

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right of way.

5. Drainage and Run-Off Control Plan

The applicant shall conform to the drainage and run-off control plan submitted on December 23, 2008 to the South Coast Region office showing roof drainage and paved walkways designed to slope into continuous trench drains at the front (beach side) and back (alley side) of the property draining into percolation pits for onsite infiltration. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Landscaping – Drought Tolerant, Non-Invasive Plants

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

7. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) No machinery shall be allowed at any time on the adjacent sand dunes, sandy beach, and intertidal zone;
- (d) Staging and storage of construction machinery and storage of debris shall not take place seaward of the property line on the sand dunes or sandy beach;

- (e) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- (f) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (g) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

8. Compliance with Consent Cease and Desist and Consent Restoration Orders

The permittee shall not block or impede the ability of the previous homeowner, Aaron Leffler, to perform and carry out the approved Restoration Plan consistent with the Consent Orders CCC-06-CD-01 and CCC-06-RO-01. Pursuant to the Consent Orders, Mr. Leffler and the adjacent homeowners at 7300, 7302, 7306, and 7308 West Ocean Front agreed to restore the sand dunes and sandy beach area between Olive Street and Sonora Street using restorative grading and planting of native sand dune vegetation and through a five-year annual monitoring report, ensure the ongoing success of the restoration project.

9. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-08-354. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-08-354. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-08-354 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. Generic Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and

content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 7304 West Oceanfront within the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 2,250 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as Medium-Density Residential; the proposed project is the demolition of an existing duplex and construction of a single-family residence, allowable under this designation. The project is located within an existing urban residential area, located between the Santa Ana River and the Newport Pier.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 400 feet wide) between the subject property and the Pacific Ocean. Vertical public access to the beach is available nearby, 60 feet to the east of the subject site at the Sonora Street end. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave up-rush during a severe storm event.

The site is adjacent to coastal sand dunes considered ESHA located on the public City owned beach property. The dune habitat in front of the subject site was graded in April 2005. The un-permitted grading and leveling of the dunes occurred seaward of the property lines of the five properties located along W. Ocean Front between 7300-7308 W. Ocean Front, between Olive and Sonora Streets. The homeowners, rather than the property owner, the City of Newport Beach were found responsible for the un-permitted grading because they arranged for, paid for, authorized, and/or hired a worker to conduct the un-permitted activity. The subject property, 7304 W. Ocean Front at the time was owned by Mr. Aaron Leffler. The Commission issued Consent Cease and Desist Order and a Restoration Order to require and authorize the homeowners (“respondents”) to restore the sand dunes and sandy beach area between Olive Street and Sonora Street using restorative grading and plating of native sand dune vegetation and through a five-year annual monitoring report, ensure the ongoing success of the restoration project. . Pursuant to the terms of the Consent Orders, the respondents are still responsible for on-

going implementation and monitoring of the Restoration Plan approved consistent with Consent Orders CCC-06-CD-01 and CCC-06-RO-01 (Exhibit 4) . Special Condition #8 requires the applicant not to block or impede the ability of the previous homeowner, Aaron Leffler, to perform and carry out the approved Restoration Plan.

The applicant proposes to demolish an existing three-story duplex and construct a new 2,449 sq. ft., 29' high, two-story single-family residence with a 118 sq. ft. second story deck, an 818 sq. ft. roof deck and an attached 427 sq. ft. two-car garage (Exhibit 3). Hardscape improvements include new concrete front and side yards and minimal landscaping consisting of small planters and vine pockets is proposed. Additionally, the applicant requests 'after-the-fact' approval of an existing 15' deep by 30' wide concrete patio into the 15-foot deep encroachment area within the City of Newport Beach oceanfront public right-of-way. The applicant acquired the proper City encroachments permits, but not a Coastal Development Permit for the existing patio encroachment. No additional work is proposed to the existing encroachment. This encroachment does not impact the adjacent sand dunes. To address water quality concerns, the applicant proposes to direct site drainage and runoff from all impervious areas and from roof downspouts to paved walkways sloping into continuous trench drains at both front (beach) and back (alley) sides of the property draining into percolation pits for onsite infiltration.

The proposed project is consistent with the City's 5-foot required setback from the seaward property line. As previously mentioned, vertical public access to this beach is available at the end of Sonora Street, approximately 60 feet east of the site and lateral public access is available along the wide sandy beach seaward of the subject site. However, the proposed patio encroachment would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes.

The proposed patio development is located in an area where a 15 foot limited patio encroachments (e.g. garden walls, patio flatwork, landscaping) onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home is allowed. Portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers are developed with a public walkway/bikeway. The project site is not located along the portion of Oceanfront that is bordered by the City's paved beachfront public lateral access way (boardwalk), the southern property line meets the sandy public beach. Although there is no walkway, the City holds the public right-of-way for street/walkway/bikeway purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront Street (Exhibit #2).

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area which is owned by the City for street purposes. This cumulative impact is addressed in the certified LUP by imposition of a mitigation plan. The mitigation plan requires that fees paid by encroaching homeowners be applied to improving public access in Newport Beach. The City has constructed a

number of public access improvements (including street end improvements which provide additional public parking spaces) using the encroachment fee funds. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with the mitigation plan, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

The LUP encroachment policies allow encroachment onto the Oceanfront right-of-way in the area of the subject site, which is between the Santa Ana River and 52nd Street. Encroachments in this area may be up to 15 feet. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The Commission finds that construction of the encroachments at the subject site is consistent with the certified LUP encroachment policies.

The applicant provided a copy of the Annual Oceanfront Encroachment Permit issued June 15, 1994 and proof of payment of the annual fee. In this case, the Commission finds that the proposed encroachment is consistent with the certified LUP encroachment policies and the Chapter 3 public access policies of the Coastal Act. The findings for which are found in the Newport Beach LUP Amendment 90-1 approved by the Commission on June 11, 1991 and which are incorporated here by reference. In addition, the City is continuing to carry out the public access improvements required by the LUP mitigation plan to offset any adverse impacts of the encroachments. The mitigation fee collected by the City is an annual recurring fee. In order to assure that the encroachments are consistent with the Land Use Plan policies addressing Oceanfront encroachments as certified by the Commission, and so are consistent with the public access policies of the Coastal Act, the applicant must submit evidence that the required encroachment fee payment is up to date. Therefore, as a condition of approval the applicant is required to submit, for the review and approval of the Executive Director, evidence that the current encroachment permit fee has been paid to the City. The property must remain enrolled in the annual fee program until the development is removed.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, the Commission imposes Special Condition #3 which requires that an amendment to this permit or a new coastal development permit be obtained for any deviations to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

Additionally, the permittee signed an encroachment agreement with the City in which he waived his right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right of way. Thus the proposed project is also conditioned to provide that issuance of the coastal development permit does not

restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of way. This would ensure future opportunities for public access and recreation.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned for one or more of the following: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse

impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

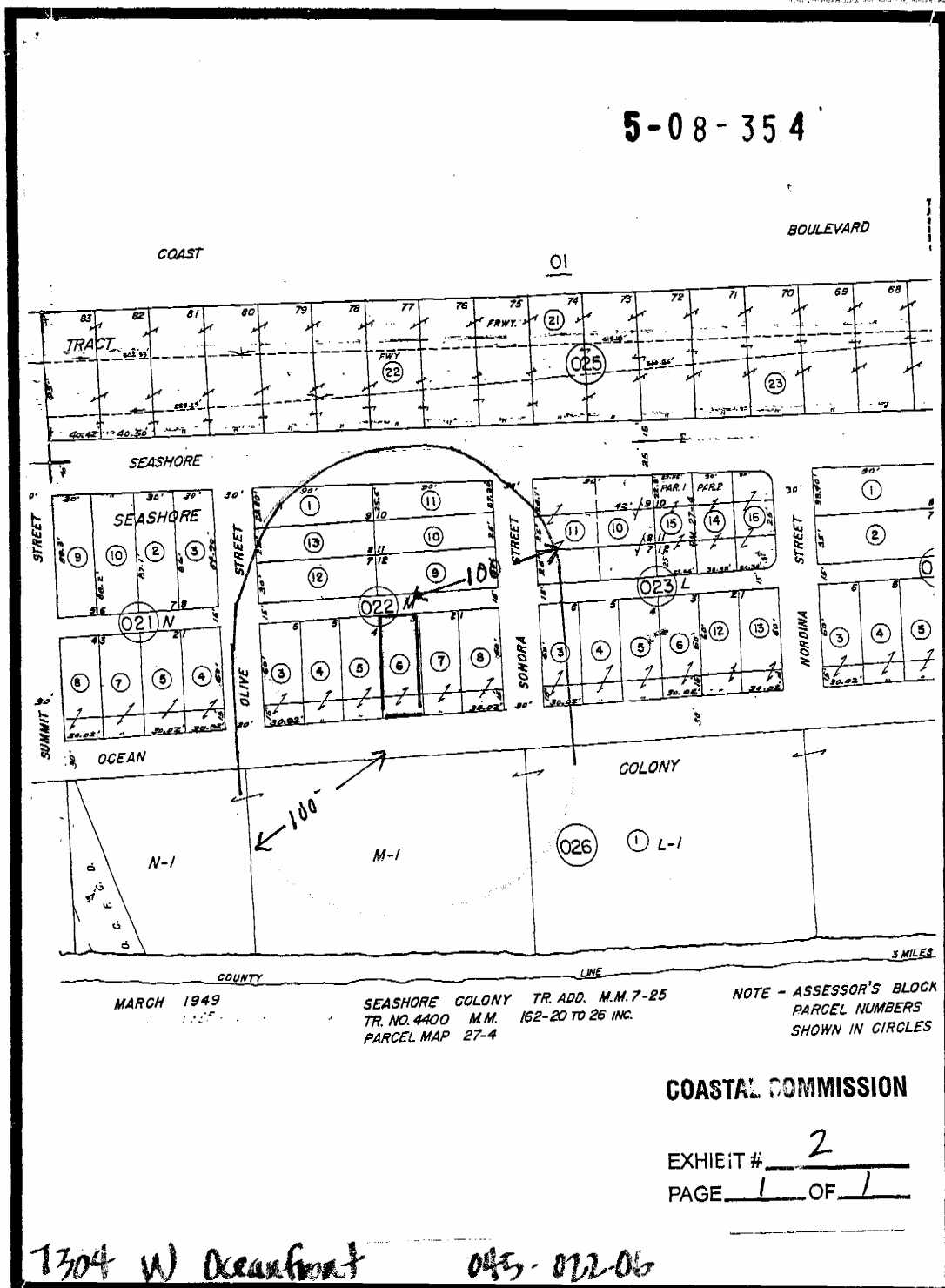
To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



Ownership Map

85063

SUSAN W. CASE, INC.
917 GLENNEYRE ST #7
LAGUNA BEACH CA 92651
12-10-08

GENERAL GRADING SPECIFICATIONS

There will be no meeting by electronic address this year.

- It is not possible to make a general statement about the results of the studies. The results are very specific and depend on the conditions of the study. The results of the studies are very specific and depend on the conditions of the study.

For the control series that he analyzed in 1976, Fennell ²⁴ reported a prevalence of 1.5% in 1975.

- Proven: October 11 and May 13, 2006. *Control*: *Coronatus* should be in place at the end of each year. *Why do we estimate the E-value probability of this scenario?* 99.9999%. *During the installation of the year, they have to be taken in the soil of the working day, otherwise the ability to install probability remains 99.9999%*

3. are greatly assisting people present matter.

- A pre-print covering shall be substituted for each page to meet the submittal requirement for the printing with the following single plastic cover, 25.50 centimeters by 40 centimeters with all corners cut. The following Inspector and Regional Field Inspectors will be required to fill out the pre-print.

Crushed slabs shall be covered

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- On 12 January 2006

1. *Arctostaphylos*

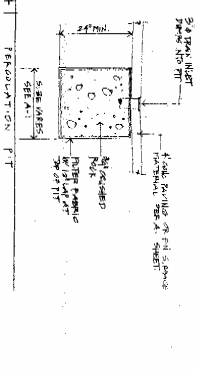
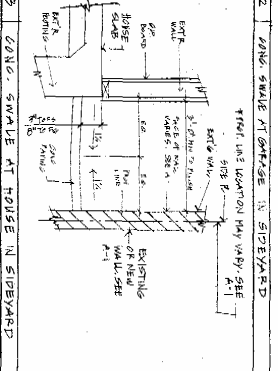
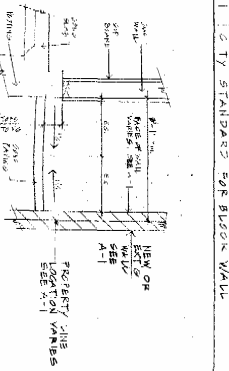
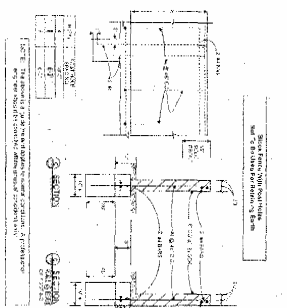
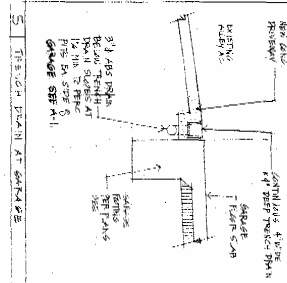
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for the individual

4. Postdrift ground action proposed by the engineering geologist, including a final description of the geology of the site, including any new information obtained during the drilling and the effect of same, as recommended or compared to the approved grading plans. Historic data provide written approval to the site-year of the site for the intended use is affected by geologic factors.

EXHIBIT # 3

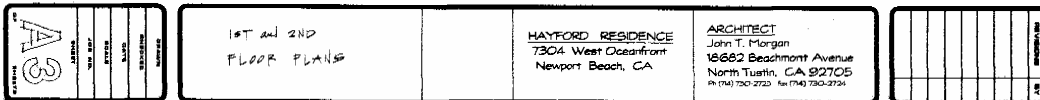
PAGE 2 OF 7

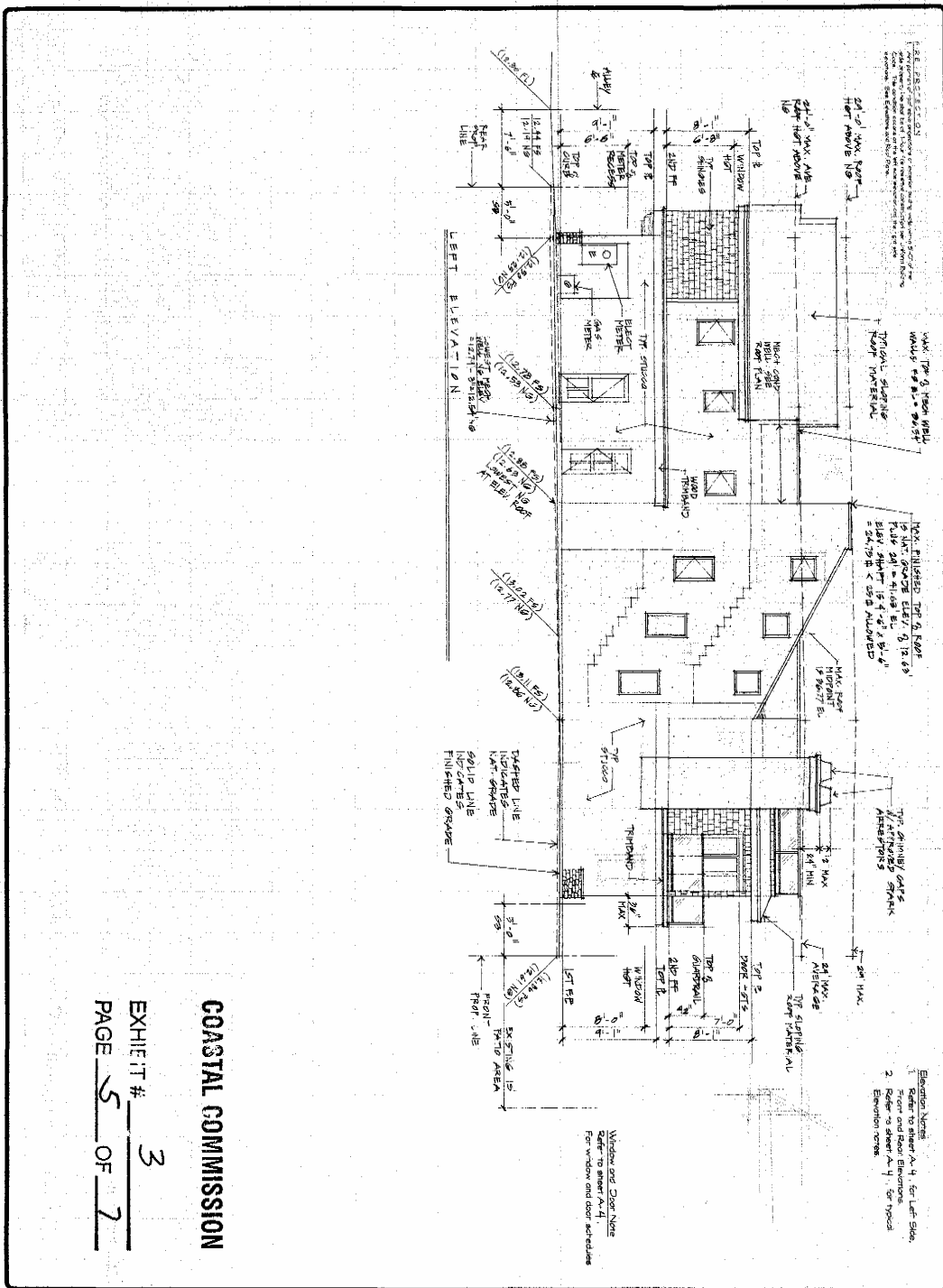


ARCHITECT
John T. Morgan
18682 Beachmont Avenue
North Tustin, CA 92705

DETAILS
and NOTES

ISSUANCE	
ENTERED	
DATE	
SCALE	
JOE NO.	
AMOUNT	
A2	
ISSUANCE	





COASTAL COMMISSION

EXHIBIT # 3

PAGE 5 OF 7

SHAWN
DISKED
DATE
4 10 04
11 11-01
NEW REP
SHEET
A5
OF SHEETS

LEFT SIDE
ELEVATION

HAYFORD RESIDENCE
7304 West Oceanfront
Newport Beach, CA

ARCHITECT
John T. Morgan
18682 Beaumont Avenue
North Tustin, CA 92705
Ph (714) 730-2723 • fax (714) 730-2724

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



Item W 17 & 18

Staff: ANM-SF
Staff Report: Jan. 26, 2006
Hearing Date: Feb. 8, 2006

STAFF RECOMMENDATIONS AND FINDINGS FOR CONSENT CEASE AND DESIST AND CONSENT RESTORATION ORDERS

CEASE AND DESIST ORDER:	CCC-06-CD-01
RESTORATION ORDER:	CCC-06-RO-01
RELATED VIOLATION FILE:	V-5-05-013
PROPERTY LOCATION:	Sandy-beach area between Olive Street and Sonora Street (seaward of properties located at 7300, 7302, 7304, 7306, and 7308 W. Ocean Front) at the northwest end of Santa Ana River Mouth Beach, Newport Beach, Orange County; Assessor's Parcel Number 045-026-01 and portions of West Ocean Front (an undeveloped right-of-way), owned by the City of Newport Beach
DESCRIPTION OF PROPERTY:	Public beach area located downcoast of the Santa Ana River mouth at the landward edge of a very wide sandy beach. The area of dunes that was leveled was approximately 40 feet wide by 150 feet long by 3 to 6 feet high.
PROPERTY OWNER:	City of Newport Beach
VIOLATION DESCRIPTION:	Unpermitted grading and leveling of sand dunes, an environmentally sensitive habitat area (ESHA), using mechanized equipment (front loader and excavator).
PERSONS SUBJECT TO THESE ORDERS:	Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff
SUBSTANTIVE FILE DOCUMENTS:	1. Notice of Violation Letter, 5/10/06

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2. Notice of Intent to Commence Cease and Desist Order Proceedings, 11/22/05
3. Dune Restoration Design Report, Pacific Coast Highway Widening Project, by LSA Associates, Inc., 2/17/90
4. Exhibits #1 through #6 of this staff report

CEQA STATUS:	Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321).
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I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve Consent Cease and Desist and Consent Restoration Orders (hereinafter "Consent Orders") (attached as Exhibit #6) to require and authorize Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff (hereinafter "Respondents") to restore the sand dunes and sandy beach area between Olive Street and Sonora Street (APN 045-026-01 and portions of West Ocean Front) (hereinafter "subject property") using restorative grading and planting of native vegetation endemic to southern California sand dune communities, and to cease and desist from conducting any further unpermitted development on the subject property. Commission staff has worked closely with Respondents to reach an agreement on the following Consent Orders to resolve these issues amicably. Respondents, through the Consent Orders, have agreed to restore and moreover, enhance the scenic views and visual qualities of this area by creating a natural sand dune complex, restore the Environmentally Sensitive Habitat Area including the planting of native vegetation, and, through a five-year annual monitoring report, ensure the ongoing success of the restoration project.

The unpermitted development includes grading and leveling of an approximately 40-foot wide by 150-foot long by 3 to 6-foot high portion of a larger sand dune system in upper west Newport Beach, just downcoast of the Santa Ana River mouth (Exhibit #1 and #2) and spreading the sand across the beach. Sand Dunes are considered Environmentally Sensitive Habitat Areas ("ESHA") and are protected under the Coastal Act and the Commission approved Land Use Plan for the City of Newport Beach. The property involved is public sandy beach area owned by the City of Newport Beach, immediately seaward of Respondents' properties.

The Commission has jurisdiction over permit and enforcement matters in the City of Newport Beach. The Commission recently approved the City of Newport Beach Land Use Plan and Commission staff is recommending that the Commission certify the Land Use Plan at the February 2006 Commission hearing. However, the City of Newport Beach

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Beach does not have a certified Local Coastal Program. Moreover, Commission staff has worked very closely with the City regarding this matter and they are supportive of this proceeding and have requested that the Commission proceed with an enforcement action to require the parties responsible for the unpermitted activities to restore the sand dunes located on City property.

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where they find that the activity that is the subject of the order has occurred either without a required coastal development permit (CDP) or in violation of a previously granted CDP. The Commission can issue a Restoration Order under section 30811 of the Coastal Act, if they find that development 1) has occurred without a coastal development permit, 2) is inconsistent with Chapter 3 of the Coastal Act, and 3) is causing continuing resource damage.

The unpermitted activity that has occurred on the subject property, including the grading and leveling of an approximately 40-foot wide by 150-foot long by 3 to 6-foot high section of sand dunes with two pieces of mechanized equipment clearly meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600.

Furthermore, the unpermitted grading and leveling of the sand dunes and the ongoing maintenance of the unpermitted development are inconsistent with the Coastal Act, including Section 30240 (protection of Environmentally Sensitive Habitat Areas) and Section 30251 (protection of scenic public views and visual qualities of coastal areas) of the Coastal Act (as fully discussed below).

The unpermitted development has adversely impacted the habitat values, scenic public views, and the natural landforms associated with the sand dunes. Such impacts meet the definition of damage provided in Section 13190(b), which defines "damage" as, "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The unpermitted development will lead to further impacts to the sand dune system, an ESHA that provides habitat for rare plant and animal species, including the endangered California Least Tern, and several other shorebird and invertebrate species.

The lack of the sand dune habitat remains at the subject properties. The continued absence of the sand dunes caused by the unpermitted development, as described below, will create adverse impacts to sensitive habitat and the scenic qualities of this area. Thus, the continues absence on the subject properties is causing continuing resource damage, as defined in Section 13190, Title 14 of the California Code of Regulations. Again, staff recommends approval of these Consent Orders in order to achieve full restoration of the site and enhancement of the native vegetation in this area, and to fully resolve this violation as efficiently and cost-effectively as possible.

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II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations (CCR).

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Title 14, California Code of Regulations (CCR) Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following two motions:

1(a) Motion

I move that the Commission issue Consent Cease and Desist Order No. CCC-06-CD-01 pursuant to the staff recommendation.

1(b) Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

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1(c) Resolution to Issue Consent Cease and Desist Order

The Commission hereby issues Consent Cease and Desist Order No. CCC-06-CD-01, as set forth below, and adopts the findings set forth below on grounds that development, conducted by Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff, has occurred without a coastal development permit.

2(a) Motion

I move that the Commission issue Consent Restoration Order No. CCC-06-RO-01 pursuant to the staff recommendation.

2(b) Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

2(c) Resolution to Issue Consent Restoration Order

The Commission hereby issues Consent Restoration Order number CCC-06-RO-01, as set forth below, and adopts the findings set forth below on the grounds that Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff have 1) conducted development without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-06-CD-01 AND CONSENT RESTORATION ORDER CCC-06-RO-01

Staff recommends the Commission adopt the following findings of fact in support of its action.

A. Description of Unpermitted Development

The unpermitted development, which is the subject matter of these Consent Orders, consists of the grading and leveling of sand dunes, an Environmentally Sensitive Habitat Area, using two pieces of mechanized equipment (front loader and excavator).

The dunes were graded the night of April 17, 2005 and into the morning of April 18, 2005, with two pieces of equipment: an excavator to break the sand dunes apart and a front loader to smooth the sand across the beach (Exhibit #3). The grading and leveling of the dunes occurred seaward of five properties located between 7300 and 7308 W. Ocean Front, which are owned by Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff (hereinafter "Respondents"). The beach where the activity

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took place is owned by the City of Newport Beach. In addition to the Commission already having jurisdiction in this location to enforce the Coastal Act, the City of Newport Beach has requested that the Commission proceed with an enforcement action to require the parties responsible for the unpermitted activities to restore the sand dunes located on City property. The Respondents, rather than the property owner, the City of Newport Beach, are responsible for this unpermitted development because they arranged for, paid for, authorized, and/or hired a worker to conduct the unpermitted activity.

Sand dunes are a vanishing landform in Southern California and their rare presence enhances the scenic and visual character of a beach. Dunes support exceedingly rare ecosystems, providing habitat for both plant and animal species that cannot survive in any other environment. Specifically, these dunes are located near the nesting ground and foraging areas of a state and federally listed endangered species, the California Least Tern. One of the few successful breeding colonies of the Least Tern in Orange County is located on the north side of the Santa Ana River mouth, just upcoast from the subject property. Potentially, the terns could use any sandy area in the vicinity of the colony to rest. The dunes, which were affected by the activities on April 17 and 18, 2005, were located downcoast of the Santa Ana River mouth at the landward edge of a very wide sandy beach, approximately 400 feet from the shoreline (Exhibit #1 & #2). The area of dunes that was leveled was approximately 40 feet wide by 150 feet long by 3 to 6 feet high. This is one portion of a dune system that runs perpendicular to the Santa Ana River for approximately 300 feet and extends further north on the upcoast side of the river. In turn, this larger segment is a remnant of an extensive dune/salt marsh system that is estimated to have at one time covered 2,950 acres on both sides of the river. Approximately 385 acres of salt marsh and 8.7 acres of dunes remain in this system that extends across the Santa Ana River from the Subject Property to the City of Huntington Beach. The unpermitted grading and leveling of the sand dunes on the subject property impacted this sensitive dune habitat.

The resource policies within the Coastal Act protect the sand dunes that were affected by the activity described above because they are natural landforms and visual resources that provide a scenic backdrop to the wide sandy beaches of Southern California, and are Environmentally Sensitive Habitat Areas under the Coastal Act. Dune habitats are Environmentally Sensitive Habitat Areas because both the physical dune habitat and the associated natural community are rare in California and easily disturbed by human activities.

B. Background: Commission's Actions and History of Violation on the Subject Property

On April 17, 2005 the Respondents arranged for and hired an equipment operator working on a dredging project at the Santa Ana River to use two pieces of equipment (front loader and excavator) to remove the sand dunes on City of Newport Beach property in front of Respondents' five individually owned properties. On the night of April 17, 2005 and into the morning of April 18, 2005 (between approximately 10:00 pm

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and 1:00 am) the worker that was hired by Respondents used the excavator to break the sand dunes apart and a front loader to smooth the sand across the beach, leveling the sand dunes consistent with the relatively flat beach profile seaward of those sand dunes.

A City of Newport Beach Maintenance Supervisor confirmed that he saw the subject property intact the morning of April 17, 2005. The following morning, on April 18, 2005, the maintenance supervisor discovered that the dunes located on the Subject Property had been removed.

On May 10, 2005, Commission staff sent a "Notice of Violation" letter to the City of Newport Beach, which addressed the unpermitted activity that occurred on City-owned property (the subject property) (Exhibit #4). The violation letter was sent to the property owner, the City of Newport Beach, and not Respondents because, at the time, Commission staff did not know who had conducted the work. After discussing the case with the City and after the City of Newport Beach Police Department conducted an investigation into this matter, it became clear that Respondents were responsible for the unpermitted grading and leveling of the sand dunes on the subject property. Respondents do not contest that responsibility in this action.

Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings

Therefore, on November 22, 2005, pursuant to Section 13181 and 13191, Title 14, Division 5.5 of the California Code of Regulations, the Executive Director of the California Coastal Commission ("Commission"), provided a *Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings* ("NOI") (Exhibit #5). The NOI sent to Respondents included a thorough explanation of why the subject activity is development under the Coastal Act and how such activity meets the criteria of Section 30810 and 30811 of the Coastal Act to commence proceedings for issuance of a cease and desist order and restoration order.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, Respondents were provided the opportunity to respond to the Commission staff's allegations as set forth in the NOI by completing a Statement of Defense form (hereinafter "SOD"). Respondents were required to submit the SOD form by no later than December 12, 2005. Subsequent to this time, however, Commission staff and Respondents entered ongoing settlement discussions. During these discussions, Commission staff extended the deadline to submit the SOD on five occasions to allow us to reach an amicable resolution to this violation.

Because Commission staff and Respondents were able to amicably resolve the violations through these Consent Orders (Attached as Exhibit #6), the parties have waived their rights to submit defenses to contest the legal and factual basis and the terms and issuance of the Consent Orders and consent to their issuance.

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C. Basis for Issuance of Orders

Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

- a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the commission without first securing the permit... the Commission may issue an order directing that person...to cease and desist.*
- b) *The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

Restoration Order

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission... [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

The following paragraphs set forth the basis for the issuance of the Consent Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

i. Development has Occurred without a Coastal Development Permit ("CDP")

Unpermitted development consisting of the grading and leveling of sand dunes with mechanized equipment (excavator and front loader) has occurred on the subject property without a CDP. The unpermitted development that is the subject of these Consent Orders meets the definition of "development" contained in Section 30106 of the Coastal Act.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the

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coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

The grading and flattening of sand dunes using two pieces of mechanized equipment (front loader and excavator) clearly constitutes "development" within the meaning of the above-quoted definition and therefore is subject to the permit requirement of section 30600(a). A coastal development permit was not issued to authorize the subject unpermitted development.

ii. Unpermitted Development is Inconsistent with the Coastal Act

As described below, the unpermitted development is not consistent with Sections 30240 and 30251 of the Coastal Act. These Sections of the Coastal Act also were fully incorporated in the Commission-approved Land Use Plan for the City of Newport Beach.

a) Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Coastal sand dunes, a rare and threatened habitat along the California coastline and one of the most fragile and dynamic natural landforms, are considered an Environmentally Sensitive Habitat Area. Sand dune habitats are Environmentally Sensitive Habitat Areas because both the physical dune habitat and the associated natural community are rare in California and easily disturbed by human activities. Sand dunes provide nesting and shelter for several species of birds and provide habitat for such rare species as the California legless lizard and several species of Blue Butterfly (which lay eggs and feed off of specific sand dune vegetation). In addition, sand dunes provide protection for inland, low-lying areas from strong storm waves.

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The unpermitted activity consisted of breaking apart a section of sand dunes with an excavator and smoothing the sand across the beach with a front loader. The area of sand dunes that was leveled was approximately 40 feet wide by 150 feet long by 3 to 6 feet high. The unpermitted activity disturbed this Environmentally Sensitive Habitat Area. Therefore, the unpermitted development is inconsistent with Section 30240 of the Coastal Act.

b) Scenic Public Views and Visual Qualities of Coastal Areas

Section 30251: Scenic Views and Visual Qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....

The Coastal Act protects the scenic views and visual qualities of coastal areas and requires that development be sited and designed to protect surrounding coastal resources. In addition, the scenic views and visual qualities of coastal areas must be protected as a resource of public importance. The resources that must be protected in this area include the scenic qualities associated with the natural beach environment. Sand dunes, an ever-decreasing natural landform, provide a scenic backdrop to the beach setting and provide a buffer between the natural beauty of the shoreline and coastal development. In this case, the unpermitted activity removed and destroyed the sand dunes, inconsistent with Section 30251 of the Coastal Act. Such unpermitted development clearly diminishes the scenic resources of this coastal area, and is clearly not consistent with the protection of the public recreational area and the protection of the coastal resources along this segment of coastline. Grading and leveling the sand dunes also failed to minimize the alteration of natural landforms. This unpermitted development is therefore inconsistent with Sections 30251 of the Coastal Act.

iii. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as those terms are defined in Section 13190 of the Commission's regulations. The unpermitted activity removed sand dunes from this portion of the beach and therefore the lack of those dunes remains at the subject property. Therefore, there is a reduced area of environmentally sensitive habitat. As described above, this results in less habitat for shorebirds and other animal species. The unpermitted development is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

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In this case, the damage is the continuing degradation of an Environmentally Sensitive Habitat Area and the impacts to the scenic views and visual resources of this coastal setting. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of "continuing resource damage."

D. Consent Orders are Consistent with Chapter 3 of the Coastal Act

The Consent Orders attached to this staff report, and signed by Respondents, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act, as also incorporated in the Commission-approved Land Use Plan for the City of Newport Beach. The Consent Orders require Respondents to cease and desist from maintaining unpermitted development and from conducting further unpermitted development on the subject property. In addition, the Consent Orders require and authorize Respondents to restore the sand dunes that were impacted by the unpermitted activity by conducting restorative grading and by planting the area with native plant species endemic to the southern California sand dune community, creating a natural sand dune system on the subject property. Moreover, Respondents, through the Consent Orders, have agreed to enhance the scenic views and visual qualities of this area by creating a natural sand dune complex, restore the Environmentally Sensitive Habitat Area, and, through a five-year annual monitoring report, ensure the ongoing success of the restoration. Therefore, the Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

E. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Consent Orders to compel the restoration of the subject property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

F. CONSENT AGREEMENT: SETTLEMENT

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. While Commission staff considers the violation to be a knowing and intentional violation, Respondents have clearly stated their willingness to completely resolve the violation, including any penalties, administratively and through a settlement process. To that end, Respondents have stated their intent to comply with all terms and conditions of the Consent Orders. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondents have also agreed to pay a monetary settlement (see Section 11.0 of the attached Consent Orders) (Exhibit #6).

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G. Findings of Fact

1. Respondents are each owners of properties adjacent to City-owned property where the subject unpermitted activity occurred. The City-owned property where the unpermitted activity occurred includes sandy-beach area between Olive Street and Sonora Street at the northwest end of Santa Ana River Mouth Beach, Newport Beach, Orange County; Assessor's Parcel Number 045-026-01 and portions of West Ocean Front ("subject property").
2. Respondents have undertaken development, as defined by Coastal Act Section 30106, at the subject property, including unpermitted grading and leveling of sand dunes, an environmentally sensitive habitat area (ESHA), using mechanized equipment (front loader and excavator) in violation of the Coastal Act.
3. Respondents, rather than the property owner, the City of Newport Beach, are responsible for the unpermitted development because they arranged for, paid for, authorized, and/or hired a worker to conduct the unpermitted activity.
4. Respondents did not obtain a coastal development permit to undertake the above-described unpermitted development.
5. On November 22, 2005 Commission staff informed Respondents that pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Commission intended to initiate cease and desist and restoration order proceedings against them, and outlined steps in the cease and desist and restoration order process.
6. The unpermitted development described in allegation #2 is inconsistent with the policies set forth in Sections 30240 and 30251 of the Coastal Act.
7. The unpermitted development described in allegation #2 is causing "ongoing resource damage" within the meaning of Section 30811 of the Coastal Act and Section 13190, Title 14, California Code of Regulations.

Exhibit List

Exhibit

Number Description

1. Site Map and Location
2. Aerial Photograph of Site Location
3. Photograph of Unpermitted Activity
4. Notice of Violation letter, May 10, 2005
5. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, November 22, 2005
6. Consent Cease and Desist Order No CCC-06-CD-01 and Consent Restoration Order CCC-06-RO-01

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**Subject Property
Pre-Violation
Oct. 2004**

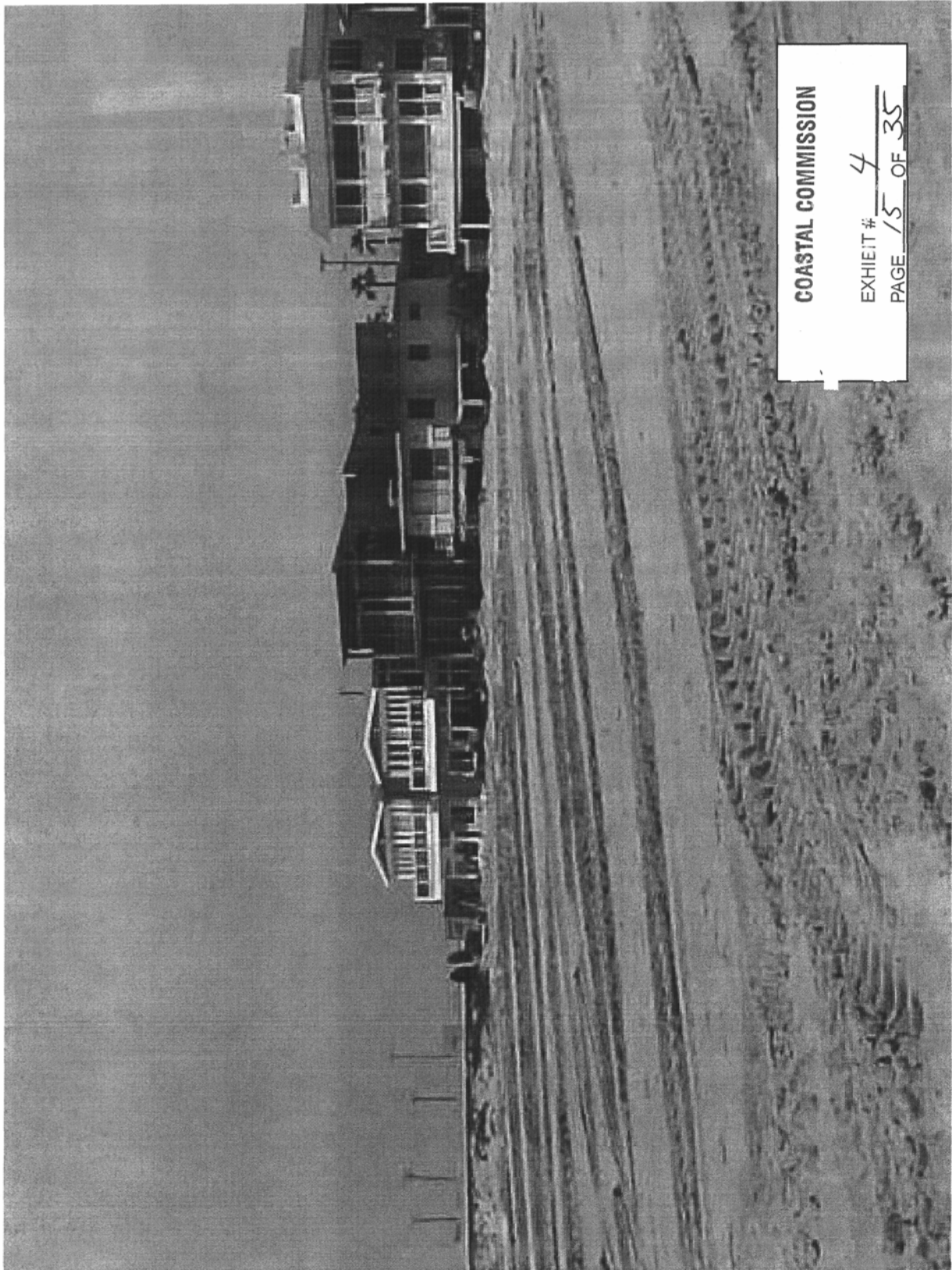
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STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

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**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

May 10, 2005

Homer Bludau, City Manager
City of Newport Beach
Newport Beach, CA 92663

Violation File Number: V-5-05-013

Property location: Northwest end of Santa Ana River Mouth Beach, Newport Beach, Orange County; Assessor's Parcel Number 045-026-01

Unpermitted Development: Leveling a Coastal Act protected landform (sand dunes) with heavy machinery

Dear Mr. Bludau:

Our staff has confirmed that development consisting of leveling a Coastal Act protected landform in the form of naturally occurring sand dunes, with heavy machinery has occurred on your property, which is located within the coastal zone. Apparently, the equipment used to undertake the development is the property of CJW Construction ("CJW"). CJW has contracted with the United States Army Corps of Engineers ("Corps") to dredge the Santa Ana River channel at the mouth of the river. CJW stores its equipment in a staging area on the south shore of the river at the river's intersection with Coast Highway. A fence separates the staging area from Summit Boulevard and the adjacent homes, but the staging area is not entirely fenced and is unlocked.

The dune removal occurred at some time during the evening of April 17th or the morning of April 18th. A Corps biologist photographed the dunes, intact, on April 17th. When the CJW site supervisor, Mike Ladoucuer, arrived at the site on April 18th, he was met by Tom Anderson, Supervisor of the City of Newport Beach Beach Crew. Mr. Anderson informed Mr. Ladoucuer of the leveling of the dunes. Mr. Ladoucuer subsequently contacted the City of Newport Police Department and reported that two pieces of his equipment, a Case 966 front loader and a Hitachi 275 excavator, had been stolen from the staging area, used to level the dunes, and then replaced. Mr. Ladoucuer identified the tire tracks of his equipment leading to the leveled dunes. Mr. Ladoucuer reports that CJW's keys were likely used to start the equipment; the starting mechanisms were not damaged.

One result of the leveling of the dunes is an increased view of the ocean provided to several residents of homes along West Oceanfront. It is our understanding that residents in this area have previously requested that the city remove the dunes obstructing their view of the ocean. The city properly denied this request. The circumstances suggest that one or more of these same homeowners orchestrated this destruction, possibly by hiring one of CJW's employees "under the table," in order to illegally circumvent the state and local laws protecting the dunes.

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Officer Rick Henry of the Newport Beach Police Department was, apparently, the investigating officer. Officer Henry did not file a police report was taken and cleared the incident, deeming the dune removal not to be a crime. We understand that the equipment that was used to remove the dunes was not fingerprinted and that the police did not interview the homeowners, whose houses front the beach, nor the employees of CJW who might have access to the equipment during the initial investigation. During a subsequent conversation with our staff, Newport Beach Police Department's Environmental Services Officer, Todd Hughes, confirmed the need for further investigation and a report.

Commission staff has researched our permit files and concluded that no coastal development permits have been issued for any of the above development. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations.... [underlining added]

The above-mentioned leveling of a Coastal Act protected landform with heavy machinery constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act.

However, Commission staff does not believe that we could recommend approval of a coastal development permit to authorize leveling of the dunes because such an activity is not consistent with the policies of the Coastal Act, Public Resources Code Section 30200, et seq. Specifically, Section 30251 limits the alteration of natural landforms in order to protect the scenic and visual qualities of coastal areas. Sand dunes are a vanishing landform in Southern California and their rare presence improves the scenic and visual character of a beach. Also, Section 30240(a) protects environmentally sensitive habitat areas (ESHA) against any significant disruption and Section 30240(b) requires that development adjacent to ESHA is sited to prevent impacts. Dunes support exceedingly rare ecosystems, and specifically, these dunes are located near the nesting ground and foraging areas of a state and federally listed endangered species, the California Least Tern. One of the few successful breeding colonies of the Least Tern is located on the north side of the Santa Ana River mouth. Potentially, the terns could use any sandy area in the vicinity of the colony to rest.

Violations involving unpermitted development that cannot be authorized through a coastal development permit may be resolved administratively by restoration of any damaged resources. Restoration of the site requires a coastal development permit. Therefore, in order to resolve this matter administratively, you must submit a complete coastal development permit application to restore the site.

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In order to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit a complete coastal development permit application by **June 9, 2005**, for restoration of the site. For your convenience, a coastal development permit application has been enclosed. Please contact me by no later than **May 26, 2005**, regarding how you intend to resolve this violation.

Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we remind you that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis
District Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement, CCC
Pat Veesart, Southern California Enforcement Team Leader, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwing, Orange County Permit Supervisor, CCC
Mike Ladoucuer, CJW Construction
Col. Doran Stauder, USACOE, Los Angeles District
Bill Patapoff, Public Works Department, City of Newport Beach
Todd Hughes, Environmental Officer, Newport Beach Police Department

Enclosures: Coastal Development Permit Application

STATE OF CALIFORNIA--THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94103-2216
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

Via Certified and Regular Mail

November 22, 2005

Dr. David Granoff 7308 W. Ocean Front Newport Beach, CA 92633 (Article No. 7003 1680 0004 0129 6128)	Bill Schonlau 7302 W. Ocean Front Newport Beach, CA 92633 (Article No. 7003 1680 0004 0129 6135)
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Angelo Cassara 7306 W. Ocean Front Newport Beach, CA 92633 (Article No. 7003 1680 0004 0129 6142)	Howard Mango 7300 W. Ocean Front Newport Beach, CA 92633 (Article No. 7003 1680 0004 0129 6159)
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Aaron Leffler
7304 W. Ocean Front
Newport Beach, CA 92633
(Article No. 7003 1680 0004 0129 6166)

Subject: **Notification of Intent to Commence Cease and Desist
Order and Restoration Order Proceedings**

Violation No.: V-5-05-013

Subject Property: Sandy-beach area between Olive Street and Sonora Street
(seaward of properties located at 7300, 7302, 7304, 7306,
and 7308 W. Ocean Front) at the northwest end of Santa
Ana River Mouth Beach, Newport Beach, Orange County;
Assessor's Parcel Number 045-026-01, owned by the City of
Newport

Violation Description: Unpermitted grading and leveling of sand dunes, an
environmentally sensitive habitat area (ESHA), using
mechanized equipment (front loader and excavator).

Dear Dr. Granoff, Mr. Cassara, Mr. Leffler, Mr. Schonlau, and Mr. Mango:

The purpose of this letter is to notify you (hereafter "Respondents") of my intent, as the
Executive Director of the California Coastal Commission ("Commission"), to commence
proceedings for issuance of a Cease and Desist Order and Restoration Order

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you to restore the sandy beach area between Olive Street and Sonora Street (APN 045-026-01 (hereinafter "Subject Property")) using restorative grading and planting of native vegetation and to cease and desist from conducting any further unpermitted development on the Subject Property.

The unpermitted development includes grading and leveling of sand dunes, which are an environmentally sensitive habitat area. Grading is considered "development" as defined by Section 30106 of the Coastal Act. Development requires a coastal development permit, and a coastal development permit was not issued and did not authorize the grading and leveling of the above-mentioned dunes.

The dunes were graded the night of April 17, 2005 and into the morning of April 18, 2005, with two pieces of equipment: an excavator to move the sand and a front loader to smooth the sand across the beach. The grading and leveling of the dunes occurred seaward of five properties located along W. Ocean Front, which are owned by the addressees of this letter (7300 W. Ocean Front, owned by Howard Mango, 7302 W. Ocean Front, owned by Bill Schonlau, 7304 W. Ocean Front, owned by Aaron Leffler, 7306 W. Ocean Front, owned by Angelo Cassara, and 7308 W. Ocean Front, owned by David Granoff). The property where the illegal activity took place is owned by the City of Newport Beach and, in addition to the Commission already having jurisdiction in this location to enforce the Coastal Act, the City has requested that the Commission proceed with an enforcement action to require the addressees of this letter to restore the sand dunes located on City property. The unpermitted grading and leveling of the dunes was purportedly undertaken to clear the private view of the ocean from the five private properties. You are responsible for this unpermitted development because you arranged for, paid for, authorized, and/or hired a worker to conduct the activity.

On May 10, 2005, Commission staff sent a "Notice of Violation" letter to the City of Newport Beach, which addressed the unpermitted activity that occurred on City-owned property where this violation took place (the subject property). After discussing the case with the City and after the City of Newport Beach Police Department conducted an investigation into this matter, it became clear that the addressees of this letter were responsible for the unpermitted grading and leveling of the sand dunes on the subject property.

Sand dunes are a vanishing landform in Southern California and their rare presence improves the scenic and visual character of a beach. Dunes support exceedingly rare ecosystems, and specifically, these dunes are located near the nesting ground and foraging areas of a state and federally listed endangered species, the California Least Tern. One of the few successful breeding colonies of the Least Tern is located on the north side of the Santa Ana River mouth, just upcoast from the subject property. Potentially, the terns could use any sandy area in the vicinity of the colony to rest. The dunes, which were affected by the activities on April 17 and 18, 2005, were located downcoast of the Santa Ana River mouth at the landward edge of a very wide sandy beach, approximately 100-125 meters from the MHTL. The area of dunes that were leveled was approximately 10 meters deep by 50 meters long and one to two meters

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high. This is one portion of a dune system that runs perpendicular to the Santa Ana River for approximately 100 meters. In turn, this larger segment is a remnant of an extensive dune/salt marsh system that is estimated to have at one time covered 2950 acres on both sides of the river. Approximately 385 acres of salt marsh and 8.7 acres of dunes remain. The unpermitted grading and leveling of the sand dunes on the subject property impacted this sensitive dune habitat.

The Coastal Act protects the sand dunes that were affected by the activity described above because they are natural landforms and visual resources that provide a dramatic scenic backdrop to the wide sandy beaches of Southern California, and are considered Environmentally Sensitive Habitat Areas under the Coastal Act. Dune habitats are Environmentally Sensitive Habitat Areas because both the physical dune habitat and the associated natural community are rare in California and easily disturbed by human activities.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings to require you to cease and desist from maintaining unpermitted development on the Subject Property or conducting any further grading or leveling of sand dunes or placement of any development on the Subject Property unless authorized through a Cease and Desist and/or Restoration Order.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

The unpermitted activity clearly constitutes "development" within the meaning of the above-quoted definition and therefore is subject to the permit requirement of section

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30600(a). A coastal development permit was not issued to authorize the subject unpermitted development.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.

Pursuant to Section 13191 of the Commission's regulations, I have determined that the actions taken at this site meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of the grading and leveling of sand dunes with mechanized equipment (excavator and front loader) has occurred on the subject property, without a CDP.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
 - a) Section 30240 (protection of environmentally sensitive habitat areas or ESHA),
 - b) Section 30251 (protection of scenic public views and visual qualities of coastal areas), and
 - c) Section 30251 and 30253 (no substantial alteration of natural landforms).
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two).

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The impacts from the unpermitted development continue to exist at the subject properties; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for a Restoration Order before the Commission in order to restore the Subject Property through restorative grading and the planting of native dune vegetation to assist in achieving successful dune restoration.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the sand dunes on the Subject Property.

In accordance with Sections 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The completed SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than December 12, 2005.**

Please be advised that Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

The Commission staff intends to schedule the hearings for the Cease and Desist Order and Restoration Order during the Commission's January 12-14, 2006 meeting in Los Angeles. However, we would like to work with you to resolve these issues amicably.

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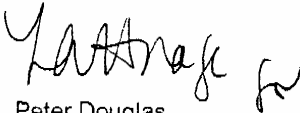
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One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case.

Sincerely,



Peter Douglas
Executive Director

cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Statewide Enforcement Analyst
Sandy Goldberg, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Andrew Willis, South Coast District Enforcement Officer
Aaron Harp, Assistant City Attorney, City of Newport Beach
Steve Yonemura, Deputy District Attorney, Orange County District Attorney

Enc. Statement of Defense Form for Cease and Desist Order and Restoration Order

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CONSENT CEASE AND DESIST ORDER CCC-06-CD-01 AND
CONSENT RESTORATION ORDER CCC-06-RO-01

1.0 CEASE AND DESIST ORDER CCC-06-CD-01

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to: 1) cease and desist from engaging in any further development on the property identified in Section 5.0 (hereinafter, "subject property"), unless authorized pursuant to the Coastal Act or to the terms and conditions of these Consent Orders, and 2) to restore the subject property by complying with the requirements of Section 3 as set forth below. Accordingly, through the execution of these Consent Orders, the Respondents agree to comply with the terms of the above-stated order and with the following terms and conditions.

2.0 RESTORATION ORDER CCC-06-RO-01

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes the Respondents to restore the subject property as described below. Accordingly, through execution of these Consent Orders, the Respondents agree to comply with the following requirements:

3.0 TERMS AND CONDITIONS

- 3.1 Within 30 days of issuance of these Consent Orders, Respondents agree to submit for the review and approval of the Executive Director of the Commission a Restoration Plan ("Restoration Plan"). The Restoration Plan will outline the restoration and revegetation of a natural sand dune system on the subject property where the unpermitted activity occurred. The Executive Director may require revisions to this and any other deliverables required under these Consent Orders and Respondents shall revise and resubmit any such deliverables in compliance with the schedule set forth in these Consent Orders and the Restoration Plan. The Executive Director may extend this time for good cause. The Restoration Plan shall include the following two components:

A. Restorative Grading Plan

- 1) The Restorative Grading Plan shall include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the original topography of the subject site prior to any grading disturbance and the topography after the unpermitted removal of the sand dunes from the subject property. The Restorative Grading Plan shall identify the source and date of the data that

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produced the pre-disturbance topography. The Restorative Grading Plan shall also demonstrate that restoration of the subject property will create a successful sand dune system similar to a natural, undisturbed sand dune habitat that as closely as possible restores the original topography of the subject property to the condition that existed prior to the unpermitted activity. If the Resource Specialist determines that alterations to the original topography is necessary to ensure a successful natural dune system, the Restorative Grading Plan shall also include this proposed topography. The Restorative Grading Plan shall include a narrative report with the reference site used in the analysis and reasons for altering the topography from the original contours.

- 2) Respondent agrees that the Restorative Grading Plan will have as its goal to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include removal of non-native, invasive plant species and/or the planting of native plant species within the subject property. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape (see Section B.7. below).
- 3) Respondents agree to complete implementation of the Restorative Grading Plan within 30 days of the approval of the Restorative Grading Plan described in Section 3 of these Orders and to implement the work in compliance with the schedule set forth herein.

B. Revegetation Plan

- 1) Respondents agree to submit a Revegetation Plan. The Revegetation Plan shall include all graded areas and areas impacted by the removal of sand dunes (hereinafter "Planting Area") so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed sand dune vegetation in the surrounding area within 5 years from the initiation of revegetation activities. Respondent agrees that the Planting Area may be expanded beyond the area impacted by the unpermitted grading of the sand dunes at the recommendation of the Resource Specialist. The Revegetation Plan shall be prepared by a qualified restoration ecologist or resource specialist and include a map showing the type, size, and location of all plant materials that will be planted in the Planting Area, all invasive and non-native plants to be removed from the Planting Area, the topography of the site, all other landscape features, and a schedule for installation of plants and removal of invasive and/or non-native plants. The Revegetation Plan shall include Performance Standards to determine the success of the dune restoration. The Performance Standards shall identify that

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"x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "y" / square meter.

- 2) The Revegetation Plan shall show all existing vegetation. The vegetation planted on the subject property shall consist only of native, non-invasive plants endemic to southern California sand dune communities. All plantings used shall consist of native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the planting area.
- 3) Respondents shall not employ invasive plant species on the subject property, which could supplant native plant species. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities are eradicated. The Revegetation Plan shall identify that all non-native plant species are removed from the Planting Area prior to any restorative grading or revegetation activities on the subject property.
- 4) The Revegetation Plan shall describe the use of artificial inputs, such as watering or fertilization that may be used to support the establishment of the plantings and specify that only the minimal necessary amount of such inputs are used. Respondent agrees that no permanent irrigation system is allowed on the subject property. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the Revegetation has become established, whichever occurs first. If, after the three-year time limit, the Revegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the Revegetation is established.

Irrigation lines shall be covered to the best extent practicable between the water connection and restoration area to ensure that public access is not impacted.

- 5) All planting in the approved Revegetation Plan shall be installed in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 15 days after the completion of the components of the Restorative Grading Plan. The Revegetation shall be planted using accepted planting procedures required by the restoration ecologist or resource specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the 15 day deadline to implement the Revegetation Plan in Section 3.1.B., may be extended as provided for under the provisions of Section 12.0, herein.
- 6) The qualified restoration ecologist or resource specialist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining

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walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the subject property. The Revegetation Plan shall identify measures to prevent erosion and dispersion of sediments across the Subject Property via rain, nuisance flow runoff, or wind. Such measures shall be provided at all times of the year for at least three years or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

- 7) The Respondents agree to fence the Planting Area during the establishment of the plantings to minimize potential damage caused by human activity. The fencing shall not block or impede sand or wind flow and shall consist of posts and cable/rope or other "permeable" material and shall be no more than four feet high. The Plan shall describe the type, size, and length of the fencing and signs to be installed. Respondents also agree to place signs intermittently along the fencing, which will state "Dune Restoration In Progress, Please Stay Out". The fencing and signs shall be installed prior to any planting activity and shall remain for at least three years or until such time as the resource specialist has determined that the fencing can be removed without threatening the success of the restoration, whichever occurs first, and then shall be removed by Respondents. Fencing shall not impede or obstruct public access to the beach and shoreline outside of the planting area.
- 8) The Revegetation Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
 - a. Respondents agree to submit, on an annual basis for a period of five years (no later than December 31st of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Revegetation Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the Planting Area.
 - b. At the end of the five-year period, Respondents agree to submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Restoration Plan, Respondents agree to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive

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Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Consent Orders.

- 3.2 Respondents shall obtain from the City of Newport Beach permission, including all necessary permits or agreements, to access the subject site and to carry out the requirements of the Restoration Plan in compliance with the approved schedule and these Consent Orders.
- 3.3 Upon approval of the Restoration Plan by the Executive Director, Respondents agree to fully implement the plan pursuant to the approved schedule, with all Restoration work to be completed as early as possible pursuant to recommendations by the consulting resource specialist. Unless the Plan provides otherwise, the restoration work shall be completed no later than 45 days after the approval of the Restoration Plan. The Executive Director may extend this deadline or modify the approved schedule for good cause.
- 3.4 Solely with respect to the obligations listed in Sections 3.1 B., C., and D., Respondents may transfer their obligations hereunder in the same manner as provided for in the transfer of permit obligations as specified in the regulations promulgated by the Coastal Commission at 14 C.C.R. 13170.
- 3.5 Within 30 days of the completion of the Restoration Plan described in Section 3.1, Respondents shall submit to the Executive Director of the Commission a report documenting the restoration of the subject property. This report shall include a summary of dates when work was performed and photographs that show implementation of the restoration plan, as well as photographs of the subject property before and after the grading and plantings required by the Restoration Plan have been completed.
- 3.6 All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program
Attn: Aaron McLendon
45 Fremont Street, Suite 2000
San Francisco, California 94105
(415) 904-5220
Facsimile (415) 904-5235

With a copy sent to:
California Coastal Commission
Attn: Andrew Willis
200 Occangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071
Facsimile (562) 590-5084

4.0 PERSONS SUBJECT TO THESE CONSENT ORDERS

Howard Mango, Bill Schonlau, Aaron Leffler, Angelo Cassara, and David Granoff, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent

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Orders, and agree to undertake the work required herein and to be jointly and severally liable for complying with all the requirements of these Orders. In the event that Respondents move or change their mailing address, Respondents agree to notify Commission staff in writing, to the addresses listed in Section 3.6 of these Orders, of their new contact information, including address and phone number.

5.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of these Orders are described as follows:

Sandy-beach area between Olive Street and Sonora Street (seaward of properties located at 7300, 7302, 7304, 7306, and 7308 W. Ocean Front) at the northwest end of Santa Ana River Mouth Beach, Newport Beach, Orange County; Assessor's Parcel Number 045-026-01 and portions of West Ocean Front.

6.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted grading and leveling of sand dunes, an environmentally sensitive habitat area (ESHA), using mechanized equipment (front loader and excavator).

7.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810 and 30811, and the Respondents have elected to not challenge the Commission's jurisdiction over this matter in the interest of settling and resolving it. Therefore, for the purposes of issuance and enforceability of these Consent Orders, the Commission has jurisdiction to act as set forth in these Consent Orders, and Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

8.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual basis and the terms and issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist Order and Restoration Order dated November 22, 2005. Specifically, Respondents waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Orders.

9.0 EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

The effective date of these Consent Orders is the date these Orders are approved by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

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10.0 FINDINGS

The Commission has based these Consent Orders on the findings adopted by the Commission at its February 2006 meeting, as set forth in the attached document entitled "Findings for Consent Cease and Desist Order No. CCC-06-CD-01 and Consent Restoration Order No. CCC-06-RO-01." The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. Respondents agree that the Commission has met all the necessary grounds to issue these Consent Orders under Section 30810 and 30811 of the Coastal Act and Respondents agree to not challenge these Consent Orders, including any challenge based on the Commission's jurisdiction to issue or enforce these Consent Orders.

11.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 11.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$225,000. Respondents agree to make an initial payment of \$30,000 within 90 days of the issuance of these Orders. Respondents agree to separate the first \$30,000 amount into two payments: one payment of \$25,855 payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account and the second payment of \$4,145 to the City of Newport Beach Police Department. Both payments shall be sent to the attention of Aaron McLendon to the address listed in Section 3.6 of these Orders.

Thereafter, Respondents agree to make 5 additional payments as follows: \$30,000 due on December 9, 2006; \$30,000 due on July 9, 2007; \$30,000 due on February 9, 2008; \$30,000 due on August 9, 2008; and \$75,000 on February 9, 2009. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount in accordance with the deadlines set above to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account, with the exception of the \$4,145 amount to the City of Newport Beach Police Department.

- 11.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 12.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections

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30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.

12.0 DEADLINES

Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control.

13.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any other agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. Respondents shall not prevent Commission staff from entering and moving freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of these Consent Orders.

14.0 GOVERNMENT LIABILITIES

The State of California, the Commission and its employees shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

15.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a unilateral Cease and Desist and/or Restoration Order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents agree to waive whatever right they may have to seek a stay or to challenge the issuance and enforceability of these Consent Orders in a court of law.

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16.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle their monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of these Consent Orders.

17.0 SUCCESSORS AND ASSIGNS

These Consent Orders are binding to Respondents and all successors in interest, heirs, and assigns. These Consent Orders are a personal legal obligation and Respondents are responsible for the work required by these Consent Orders without regard to the ownership of their property adjacent to the subject property. Respondents shall provide notice to all successors and assigns of any remaining obligations under these Consent Orders.

18.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

19.0 GOVERNMENTAL JURISDICTION

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

20.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders.

21.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

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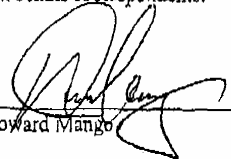
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22.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:


Howard Mango

1/25/06
Date

Bill Schonlau

Date

Aaron Leffler

Date

Angelo Cassara

Date

David Granoff

Date

Executed in Chula Vista on behalf of the California Coastal Commission:

PETER DOUGLAS, Executive Director

Date

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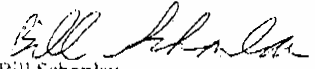
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IT IS SO STIPULATED AND VERIFIED:
On behalf of Respondents:

Howard Mango

Date


Bill Schonlau

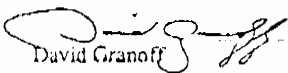
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1/25/06
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1/25/06
Date

Executed in Chula Vista on behalf of the California Coastal Commission:

PETER DOUGLAS, Executive Director

Date

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